

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

FRIENDS OF PINE STREET, d/b/a
PINE STREET COALITION
Plaintiff,

V.

THOMAS D. EVERETT, in his capacity as Executive Director of the Federal Highway Administration, JOE FLYNN, in his capacity as Secretary of the State of Vermont Agency of Transportation, and MIRO WEINBERGER, in his capacity as Mayor of Burlington,
Defendants.

Civil Action No.
5:19-CV-00095-GWC

DEFENDANT THOMAS D. EVERETT'S STATUS REPORT

Defendant, Thomas D. Everett, in his official capacity as Executive Director of the Federal Highway Administration (“FHWA”), by and through his attorney, Jonathan A. Ophardt, Acting United States Attorney for the District of Vermont, hereby provides the Court with this Status Report in compliance with the Court’s August 9, 2019, Order granting a voluntary remand to FHWA.

Since the May 20, 2021 Status Report, the Limited-Scope Final Supplemental Environmental Impact Statement (LS-FSEIS) was approved and published in the *Federal Register* on September 17, 2021. The required 30-day review period between the publication of the LS-FSEIS and a Record of Decision (“ROD”) expired on October 18, 2021. Since that date the Defendants have been working on drafts of a ROD and moving those drafts through the respective review processes.

It is currently anticipated that final approval and publication of the ROD will occur in

mid to late November. This timeline is subject to extension if during the review process changes or revisions are requested that require additional reviews. There is also uncertainty on the timeline due to the possibility of furlough for employees at the Federal Highway Administration. Currently, funding for the agency is only authorized through December 3, 2021. *See With Negotiations Ongoing, Congress Moves to Avert Furloughs for Thousands of Federal Transportation Workers*, Michael Laris, Oct. 29, 2021, www.washingtonpost.com/transportation/2021/10/28/surface-transportation-authorization/. Congress must pass the pending infrastructure legislation, or a further temporary bill, granting appropriations for FHWA, by December 3, 2021, or FHWA's staff will be furloughed.¹ *See* Dept. of Transp., *Operations During a Lapse in Annual Appropriations and Surface Transp. Authorization Plans by Operating Admin.*, Sept. 28, 2021, available at www.transportation.gov/sites/dot.gov/files/2021-09-/DOT%20Shutdown%20Plan%209-28-2021.pdf. Given the uncertainty regarding the passage of the infrastructure legislation, if a furlough occurs FHWA cannot opine on how long it would last, or how long it would delay publication of the ROD. FHWA proposes that the stay be continued, and that FHWA submit to the Court a further status report upon publication of the ROD. The parties have further agreed that they will submit a scheduling order to the Court, establishing all briefing deadlines, within 30 days of the issuance of the ROD.

Dated at Burlington, in the District of Vermont, this 29th day of October, 2021.

¹ FHWA staff were among 3,700 U.S. Department of Transportation Staff furloughed from September 30 through October 2 due to the expiration of funding, before Congress passed a temporary 30-day funding bill. *See* Ian Duncan, *Biden Signs Measure to Extend Federal Highway Fund Amid Debate over Infrastructure Package*, Oct. 2, 2021, www.washingtonpost.com/transportation/2021/10/01/transportation-department-furloughs/

Respectfully submitted,

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By: /s/ Jason Turner

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*Attorney for the Thomas D. Everett, in his
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